



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-11862

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel

For Applicant: *Pro se*

07/26/2016

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 30, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 27, 2015, and requested a hearing before an administrative judge. The case was assigned to me on December 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 3, 2016, and the hearing was convened as scheduled on February 25, 2016. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence

without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, called a witness, and offered exhibits (AE) A through P, which were admitted without objection. The record was kept open and Applicant submitted AE Q through T, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 3, 2015.

### **Findings of Fact**

Applicant admitted all the SOR allegations.<sup>1</sup> His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 55-year-old employee of a defense contractor. He has worked for this employer as an engineer since 1982. He has a bachelor's degree. He is married, but amicably separated from his wife in 2009. He has one adult child. He has no military service. He has held a security clearance for 34 years and has had two security violations during that time.<sup>2</sup>

The SOR alleged Applicant failed to file his federal and state income tax returns for tax years 2006-2013, that he is indebted to the IRS in the amount of approximately \$43,229 for which a tax lien was filed, and that he has had his wages garnished since June 2012 in order to pay the federal back taxes that he owes. The tax liens were listed in credit reports from June 2012 and November 2015 and in his June 2012 security clearance application.<sup>3</sup>

Applicant testified that his financial difficulties followed a difficult period in his life. In 1999, his mother-in-law, father-in-law, and mother all passed away within 14 weeks of each other. His wife also experienced some serious medical issues. He found himself in a depressed state and increasingly turned to the use of alcohol. He eventually became a self-described alcoholic. The collateral effect of these problems was an uncaring attitude about filing tax returns and paying taxes. He sought assistance from his employer and entered into an alcohol-treatment program and attained sobriety in 2012. He also became a licensed massage therapist and found that this work was therapeutic for him. He further explained that he had to right himself before he could work on his tax issues and this was why it took so long to begin resolution of those issues. There is no evidence of any financial counseling. The status of the SOR tax issues is as follows:<sup>4</sup>

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<sup>1</sup> Without objection, I amended the SOR to conform to the evidence. The dates reflected in SOR ¶¶ 1.a and 1.b were changed to "2006-2013." In SOR ¶ 1.c, the language "U.S. IRS" was inserted for "State of Ohio." Tr. at 12, 73.

<sup>2</sup> Tr. at 6-7, 35-37, 39-40; GE 1.

<sup>3</sup> GE 1-3.

<sup>4</sup> Tr. at 36-40; GE 1, 4.

**SOR ¶¶ 1.a and 1.b (unfiled federal and state income tax returns for tax years 2006-2013):**

Applicant filed his federal tax returns as follows: 2014 return filed Aug 2015 (extension filed); 2013 return filed July 2015; 2012 return filed December 2014; 2011 return filed October 2014; 2010 return filed December 2014; 2009 return filed December 2014; 2008 return filed July 2010; 2007 return filed December 2009; 2006 return filed December 2009. He filed his 2011-2013 state income tax returns in February 2016. As of the date the record closed (April 1, 2016), there is no evidence that Applicant filed his 2006-2010 state tax returns. He indicated that he submitted all the necessary documents to his accountant for completion of those state tax returns, but he failed to provide documentation that the returns were completed and filed. These tax return issues are unresolved.<sup>5</sup>

**SOR ¶ 1.c (federal tax lien for \$43,229):**

Applicant presented documentation that the tax lien was released in December 2015, which resulted from tax liability for years 2006-2008. Applicant still owes the IRS over \$7,000 for his 2010 and 2011 taxes.<sup>6</sup>

**SOR ¶ 1.d (monthly wage garnishment of \$400):**

Applicant testified that in June 2012, the IRS involuntarily increased his tax withholding through his employer by \$400 a month. He has been paying this amount ever since then. He believes the tax liability for years 2010 and 2011 is being paid by this method.<sup>7</sup>

**Character Evidence:**

Applicant's supervisor testified and wrote a reference letter stating that Applicant is a good employee whose appraisal indicated adequate performance. He recommends that Applicant retain his security clearance. Applicant's massage therapist employer wrote a reference letter stating Applicant was reliable, honest, and sincere.<sup>8</sup>

**Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

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<sup>5</sup> Tr. at 43-44, 48-50, 52, 58; AE C-N, R-S.

<sup>6</sup> Tr. at 42-43; AE A-B.

<sup>7</sup> Tr. at 59-61; AE B, P.

<sup>8</sup> Tr. at 66-67; AE Q.

disqualifying conditions and mitigating conditions that are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has been delinquent paying his federal taxes over an extended period and he failed to timely file his 2006 through 2013 federal and state income tax returns. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's tax debt and failure to file his tax returns are recent events and cast doubt on his reliability, trustworthiness, and good judgment. He recently filed all of his past federal tax returns and three years of state tax returns, but he still has not filed state tax returns for years 2006-2010. The IRS is still involuntarily collecting withholding from his paycheck for back taxes that he owes. AG ¶ 20(a) is not applicable.

Applicant's family circumstances (deaths of family members), his resulting depression and alcoholism, were events somewhat beyond his control. However, these events took place a number of years ago. Applicant also indicated that he did not care about filing tax returns or paying tax debts during this time in his life. That is not a condition beyond his control. He finally took action on his tax issues years after the fact. His delayed response to his tax problems was not responsible. AG ¶ 20(b) is partially applicable.

Applicant did not seek financial counseling. Given Applicant's delayed reaction to dealing with his tax problems and the remaining unfiled state returns, there are not clear indications that Applicant's financial problems are under control. The evidence does not show that Applicant put forth good-faith efforts to file his federal and state income tax returns and pay the resulting income tax debt. The IRS had to start involuntarily withholding Applicant's pay to collect on his federal taxes and that involuntary action continues today. AG ¶¶ 20(c) and 20(d) do not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant's tax situation came to be an issue. However, I also considered that he failed to timely resolve his tax obligations. He has not established a meaningful track record of financial responsibility when addressing his federal and state income tax issues.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraphs: 1.a – 1.d:                      Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge